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Cree Language and Culture

VS

The Canadian Criminal Justice System

Submitted to:

R. Darnell for Anthro 483

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Scene 1: A Provincial courtroom in Edmonton. The judge is aloof and imposing, examining documents, making notes. The attorneys and prosecutors mill and scurry about their tables, consulting thick files and speaking earnestly in whispers with various court personnel. The courtroom is half full of curious and/or apprehensive onlookers and witnesses.

A case is called and the defendant walks to the railing. He is Native and accompanied by a Native courtworker. The clerk of the court, when the time for the defendant's testimony comes, asks:

"Do you swear to tell the truth, the whole truth, so help you God?".

The defendant hesitates and looks appealingly at the courtworker, the courtworker hurries to explain the question in Cree. The defendant starts to grin and the courtworker becomes flustered. 'To swear to tell the truth' is not a concept in Cree and while the defendant was familiar with English, the meaning of the legal phrase was not clear. In a hurried attempt to explain, the courtworker had translated the phrase as, "Do you curse------?". There is no meaning for 'swear' in Cree besides this one. The courtworker finally managed: "Is what you say the truth in God's name?".

Other courtworkers faced with explaining, "Do you swear-------?", have resorted to, "Will you tell your absolute truth and give your word?". Or the defendant may be asked to tell the truth 'by the pipe'. Or simply "Don't lie".

Another courtworker told of a case in the Supreme court of Alberta in which an elderly Native man and his granddaughter were witnesses. After multiple explanations that he hadn't sworn in his life and never wants to, the old man finally picked up the Bible, apologized to the court and said, "Son of

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a bitch". He had afterall, despite his protests, been ordered to swear on the Bible.

Scene 2: A courtroom in Lac La Biche. A preliminary hearing for a murder case has been in progress all day. Late in the afternoon, the judge dismisses the case after listening to the statements of all involved. Everyone leaves the courtroom except the defendant, a Native woman. She remains standing, refusing to budge. Finally, a Native courtworker who has been observing the case approaches and asks her "What's the matter?". She replies:

"Well, what do I do now?"

The courtworker tells her: "You're a free woman. Go home."

The Native woman had not understood the court proceedings. When her case was dismissed the defence counsel left the courtroom with the rest of the crowd. If he had explained to her what the result was, he had not checked to make sure she understood. She very obviously hadn't.

Scene 3: Again, a courtroom in Lac La Biche. The court clerk is reading out the charges laid against a Native man. When she is finished, the judge asks the puzzled defendant if he has understood the charges. He has not. The courtworker takes the charge sheet and attempts to explain the offences. He grinds to a halt in the first paragraph - there is no Cree equivalent for the phrase "in the Province of Alberta". After some thought he continues: "In the subdivision of Canada called Alberta-----".

Scene 4: A Family courtroom in Edmonton. A social worker is explaining to the court that he wishes to apply for a temporary wardship for the two children of Mrs. X, a Native woman. Mrs. X starts to cry and continues to do so until the hearing is over, when she is hustled into an empty office by the Native

courtworker who had been called in by the judge. The courtworker calms her down and explains that temporary wardship means the kids will be in a foster home up to six months, and not forever. If Mrs. X starts to do something to improve the situation that prompted the action, she may even get them sooner. Mrs. X's hopes begin to raise a little. She had been under the impression, which the social worker had apparently not noticed, that temporary wardship meant the children were taken away permanently and she would not be allowed to visit them, or would ever see them again.

cene 5: A courtroom in a Northern Alberta small town. A young Native woman is on trial. She speaks some English and has told the judge she didn't want the help of the Native courtworker. The judge had winked at the courtworker. The young woman got stuck as soon as the hearing began. The clerk asked her: "Do you swear----?" and she replied: "I never, never swear!". The judge repeated the question and the girl made the same type of reply. The courtworker interrupted (politely) and explained to the girl what was wanted. Things then proceeded smoothly.

These stories, and others, were related to me by Native courtworkers, current and former employees of Native Counselling Services of Alberta.

Native Counselling Services of Alberta is a courtwork service organization run by and for Native people. It was created as a response to a growing awareness among Native people that something should, and could be done about the large numbers of Native people involved in the Criminal Justice System.

NCSA's workers are Native (only 6 out of 84 are Non-native)[1] many of whom speak one or several Native languages, many of whom have had "personal" experiences with the Criminal Justice System. Working in correctional insti-

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[1] 'Native' in this paper is used to refer to Metis, Inuit, Status and Non-Status Indians.

tutions, family court, juvenile court, and criminal court, Native courtworkers can offer assistance and information to Native clients from one end of the criminal justice process to the other (see the attached NCSA pamphlet for a more complete description of organization and services offered).

There is little doubt that the courtworker program and other kinds of programs are needed, and will be needed in the future to help alleviate the severe disadvantages faced by Native people involved in the criminal justice system. The incarceration rate for Natives is by itself an over-whelming indication of need. Natives are grossly over-represented in Alberta's correctional institutions. While comprising only 5% [2] of Alberta's population. Native people made up 58.6% of the sentenced inmate population in Peace River Correctional Institute in 1977. They made up 52.6% of the sentenced population at Fort Saskatchewan's Women's Correctional Institute, and 43.3% at Lethbridge Correctional. (see table 1)

The root of the situation seems to be a lack of information and understanding on the part of both the criminal justice system and the Native people.

The Canadian legal system was imposed on Natives by Whites eager to "civilize" them. When the Indian Act is taken into consideration, most Native people have to obey more laws than any other group of Canadian citizens. Almost none of these laws bear any resemblance to the traditional and custom-based law they were supposed to replace and improve upon.

There are several main areas in which problems of interpretation and misunderstanding seem to be: 1) guilt, 2) property rights, 3) human relations, 4) the Indian Act, and 5) grammar.

[2] This is an estimate. Exact figures are impossible to determine.

TABLE 1[1]

NATIVE STATUS of Sentenced Inmates in each Alberta Correctional Institution

Institution	Sentenced Inmates With Native Status			Total Sentenced Inmate Population		
	March/76	July/76	March/77	March/76	July/76	March/77
PRCI	53.9% (90)	59.4% (92)	58.6% (85)	100% (167)	100% (155)	100% (145)
FSCI (W)	32.8% (19)	36.2% (21)	52.6% (20)	100% (58)	100% (58)	100% (38)
LCI	44.3% (62)	50.0% (71)	43.3% (61)	100% (140)	100% (142)	100% (141)
FSCI	37.3% (145)	32.9% (124)	38.5% (123)	100% (389)	100% (377)	100% (319)
BCCC	29.0% (29)	24.0% (25)	26.0% (38)	100% (100)	100% (104)	100% (146)
NBFC	25.0% (12)	** 42.3% (11)	24.1% (28)	100% (48)	100% (26)	100% (116)
CCI	15.5% (56)	15.8% (62)	17.7% (55)	100% (362)	100% (392)	100% (311)
CRC	- -	- (1)	- (1)	- -	- (11)	- (3)
Total	32.7% (413)	32.2% (407)	33.7% (411)	100% (1264)*	100% (1265)	100% (1219)

Missing Cases: March 31, 1976 = 7; July 16, 1976 = 5; March 31, 1977 = 3

[1] Taken from CPIS, Alberta Solicitor General, p 44, 1978

*This total does not include seven sentenced inmates at CRC on March 31, 1976. These inmates have been presented as missing cases.

**This large increase in the proportion of natives at NBFC could be the result of a selectively applied reduction in inmate population. It should not be interpreted that an increasing percentage of natives are serving at NBFC.

'Guilt' is a concept with enormous legal repercussions. "Intent to commit a crime" is an integral part of deciding on a verdict. It is also a concept that seems alien to many Native cultures. (I don't know enough about these cultures to venture a speculation as to why.)

Morse (1976: 511) comments:

"The Native people traditionally lived off the land and the sea and their language reflects this relationship by its emphasis on descriptive words rather than abstract ideas. This concrete approach to reality was, of course, also reflected in their approach to law. Law was concerned with right and wrong behaviour and compensating the victims of the latter. The lack of abstract legal concepts has resulted in difficulty in translating many of the terms and ideas of the judicial system into a Native language. There is no word meaning "guilty" in Inuit and some Indian languages. Yet these languages are not simple, nor is the vocabulary limited."

Sissons (1968) the first judge of the NWT district court (1955-66) gives an excellent example of the problems that can arise with guilty pleas coming from Native defendants:

"The J.P. says to the accused, through an interpreter:

"Matthew Koonungnak, do you plead guilty or not guilty to the charge laid before you?"

Koonungnak hesitates.

"Let me ask you this. Just take your time. (To interpreter): Does he say that he did this, or does he say that he didn't do it?"

"Yes I did this."

"Matthew Koonungnak, you plead guilty to the charge. You admit that you killed the animal as is stated here. Is that true?"

"Yes."

The J.P. inferred from this conversation a plea of guilty, and I do not criticize him for this because it had long been a practice of bureaucratic convenience to translate "the Eskimo says he did this" as "the Eskimo pleads guilty."

This is not only unjust to the Eskimo because he does not understand what "guilty" means, but it would be unfair to any man in any court. Let us take, for example, the case of a hypothetical white man. Let's call him Jack Sissons. Let us say that Jack Sissons is observed to shoot a man and is charged with murder. In murder cases pleas are not taken but we can use it for an illustration.

If Jack Sissons were to tell the Judge: "Yes, I shot the man," no court would interpret this as a plea of guilty to the charge of murder. The accused has admitted only to committing an act which might be murder or a number of other things. Yet, in the case of Koonungnak, his admission that he shot the muskox was taken as a plea of guilty to a breach of the game ordinance." (1973: 123-124)

Judge W. Morrow who replaced Justice Sissons, also had to handle similar cases:

"Sometime ago I had occasion to open up a guilty plea made by an Indian before a justice of the peace. Before this case was through it became the first instance in Canada where the new Canadian Bill of Rights was applied to upset discriminatory legislation: R.V. Drybones ((1969) 71 W.W.R. 161). The final adjudication was in the Supreme Court of Canada where the Territorial Court's application of the statute was upheld. In another case involving the illegal shooting of a polar bear by an Eskimo offshore on the sea ice, I set aside the guilty plea when it became apparent there might be a lawful defence.

Before the case was over I had to rule on Canadian Sovereignty over the sea ice. (R.V. Tootalik, (1969) 71 W.W.R. 435)." (1974: 240-41)

Native courtworkers have had to deal with guilty pleas on numerous occasions but they are by no means the most difficult problem that have had to be solved. The concept of "drunkenness", for example, sometimes causes difficulty in court. To many Natives there is a great difference between being drunk and being unconscious (even if the cause of this is drinking). As a result many Natives will deny being drunk in court when the evidence is almost irrefutable that they were drunk. To the court this is merely contrary behaviour--to which the court is seldom sympathetic.

The difference between borrowing, buying, and stealing has also caused problems in court. In isolated Native communities it is often considered quite proper to "borrow" something from a house when no one is at home; the item will be returned. In the viewpoint of the court this is theft. Newcomers to the city usually find out the difference at the police station. Non-natives have been known to take advantage of this situation. In a recent case a Non-native doctor bought five acres from a Native family that owned 160 acres. He asked to borrow the land title to prove his possession of the five acres. Since the family had only the paper with land title for 160 acres they lent this to him. He refused to return it, claiming that, through an interpreter, he had told them he was buying the land title. It took the Attorney General and NCSA two weeks to resolve the dispute.

A related problem which also has its roots in cultural conceptions of property rights, is that of "sharing" with friends who in the case of many city dwellers, did not intend to be sharing. One courtworker told of a case in which a Native man who had just moved to the city went on a drinking spree with a White man he met in the tavern. They had a marvellous time together and the

Native man was certain they were great friends. Eventually he decided to call it an evening and went to the address his friend had given him to make himself at home. When the police arrived he found that the fellow was not as good a friend as he had assumed.

A second area that causes difficulty in court is conceptions of human relations. 'Rape' for example is very difficult to explain to a Native client. The only way to translate the word is "grabbing" (which opens up a well of speculation on the culture's attitude towards women and sexual relations.). A female NCSA courtworker had to translate and interpret in a rape and robbery case. She made no bones about never wanting to do so again. She found she had to skip many of the legal terms but had little problem with the medical ones. When she tried to translate rape, she said that it was awful, "some guy started to laugh". She was sure it wouldn't have been too bad if it was "guy to guy" but "guy to girl is embarassing!". She explained that sex is rarely discussed especially between male and female. (As a matter of interest, the defendant, a 19 year old Cree boy who understood very little English, was found 'not guilty' and was reimbursed for the 10 months he spent in custody.) Another worker (male) commented that he had worked with rape cases and found the trials "very bad". The worker must ask direct questions and can't just hint for an answer. It's sometimes so embarassing for the girls they will drop the charges rather than continue.

"Child Neglect" is another area of human relations that is difficult to explain to Native people. Courtworkers gave examples in which an infant was left with an eight year old babysitter and another in which the parents were alcoholics. In both cases the children were clean and well-fed and the Native parents could not understand how this could be child neglect and why Child

Welfare workers apprehended the children. Native parents also seemed to have trouble with concepts such as "child development", "mental development", "children's comprehension" and "conscience". Whether this is due to a low average level of education or cultural differences the courtworker who reported this, wasn't sure.

The "Indian Act" is the fourth problem area in interpretation. Few Native people have had access to a copy of the Indian Act, even fewer have read it, fewest of all understand it and all its legal obscurities and implications. A former courtworker told me of a case in which a Native woman had been jailed for illegal possession of moosemeat. She had been given the moosemeat to help feed her six kids. (She was very poor, and was not married.) She was arrested by a wildlife officer during a routine check. On the third day of her jail stay the whole thing came to the attention of a courtworker who spoke with her in an attempt to straighten the matter out. She didn't know if she was Treaty, though she knew her father was and her mother wasn't. Since she had never married, she was, of course, Treaty --- and entitled to the moosemeat. Charges were immediately dropped but the meat had already been given away. The courtworker added that it is very common for Native people not to know their rights.

In another very similar case, the result was quite different. A Native woman charged with illegal possession of moosemeat told her lawyer that she was a Treaty Indian and he built his defence on this. Questioning by a Native courtworker revealed, however, that she was not. She had at some time in the past married a Non-Treaty Indian and therefore lost her rights. The woman did not believe that any law could change her Indian status, "her nationality" as the courtworker put it. The fine was rescinded after all this was explained to the court. The meat was given to needy families in the area by Fish and

Wildlife (a practice now standard in many areas).

Cree grammar and etiquette forms (or the grammar and etiquette of any Native language, probably) have caused some very unique situations in the courtroom. A brief example should be enough. A defendant was asked:

"Who came out of the bush?" The defendant pointed to a woman seated in the court and said, "Him!". The question was repeated several times with the same reply given. The courtworker managed to settle things with a quick explanation of Cree pronouns. Etiquette arises when out of respect, a Native witness will avoid calling someone by name. The court gets impatient trying to sort out who is "he who lives by the Parliament building" or "he who lives by the creek".

As Morse mentioned, (quoted earlier in this paper) many of these difficulties arise from the more concrete world view of many Native groups. Abstract concepts are more infrequent than they are in English. The physical situation would have had an influence on the law, as would the occupations found within the group. The kinship system, the political system, the religious viewpoints would all affect the law,and peoples' conceptions of it.

The lack of a written language in most Native cultures including the Cree would also affect the conception of law. According to Morse this emphasis is still influential today "and leads to some difficulty in comprehending the complicated system of written laws and procedures by which the dominant society lives." (1976: 512)

An added explanation is that because the legal system is imposed from without, many Native people will see it as an "enemy" (Morse 1976: 576) and refuse to have anything to do with it, and/or refuse to trust it.

The situation then, faced by Native people today is one of having little or no understanding of a legal system alien in most ways to traditional concepts

of law. This problem is most obvious in court in five main areas: guilty pleas, property concepts, human relations, the Indian Act and minor misunderstandings rooted in Cree grammar and etiquette.

Our main reference group for this section has been the Cree because this is the group the Native courtworkers in Northern Alberta (who are my sources of information) work most frequently with.

Agents of Change and Future Trends:

The most fundamental change that would ease the whole situation is to prevent Native people from becoming involved with the Criminal Justice System in the first place. The immensity in scope of this project makes it very daunting, especially it would seem, to the agency entrusted with this duty - the federal government. Decreasing Native involvement in the justice system must start at basics - changing the socio-economic status of Native peoples. Part of Native involvement with the legal process is due to cultural misunderstandings but part, and a major part, is due to poverty and all the corollaries of poverty such as lack of education, no job opportunities, alcoholism, lack of self-confidence and self-worth, and so on.

Few organizations have the capital or manpower or mandate to attempt basic changes. Community education from agencies such as NCSA and Alberta Native Communications help to a certain extent. Lifeskills programs are also worthwhile, but they only scratch the surface.

They provide services only after the process has started, once the Native people have come into conflict with the law. Legal Aid for example provides lawyers for large numbers of Natives charged with indictable offences. NCSA gives legal assistance to those charged with summary and indictable offences as well as providing services in family and juvenile courts. There are equiv-

alents to NCSA in most of the Canadian provinces and territories, operating with varying degrees of success.

Native liaison workers operate in most of Alberta's correctional institutes. The Native Brother- and Sisterhoods also work to help Native people in the institutions. Other projects have been originated and run by Native organizations (see the NCSA pamphlet for descriptions of some of these), however, they alone cannot provide the complete solution.

It is necessary for Canadian government at all levels to become more committed to promoting change. Some progress is being made, with the report of the Kirby Commission being an excellent (though sometimes naive) example. They state at one point:

"Native people finding themselves involved in proceedings which they do not comprehend are filled with apprehension, understandably enough. They are sensitive about their lack of understanding of what is happening and about their deficiency in the language of the Court. In the result, they often become mute, unable to say anything and may enter a plea of guilty without fully realizing its significance or simply to get the whole thing over with - to get out of the Court. This is particularly true of older Native people and of juveniles, and in the more remote parts of the province." (1978: 47)

This is more awareness of the reality of Native problems in court than has been shown by any other government body.

The Kirby Commission also makes recommendations on court interpreters, courtworkers, legal aid, and others. All of which, if implemented, would do much to improve the whole situation. For example, on court interpreters, they recommend:

"--- Native people having sufficient formal education and fluency in the English language should be given training in a basic understanding of the

legal process, plus emphasis on their responsibility to provide objective and accurate translation." (1978: 48)

While this is an excellent recommendation[3] court translators are only a minor part of the problem. Most of the younger generation understand English. In fact, according to one courtworker with at least ten years of work experience, some young Native people exploit their supposed lack of English to get leniency from the court.

Elderly people and those from remote communities still need translators in court and many rely on courtworkers speaking their language. [4] Some may not seek help from courtworkers now because some areas have only English speaking workers, according to one courtworker. The problem, though partly language translation, is mainly a problem of legal language interpretation.

The problem of legal interpretation was recognized by judges such as Sissons and Morrow, both influential in Canadian courts. Their example and the rulings they made, have done much to get Native clients a more sympathetic hearing. Sissons reports the good relations that resulted when he attempted to use some Inuit words in court, if only as courtesy. (1968:124) He also attempted to incorporate some traditional structures in his courtroom.

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[3] Court translation has also recently become an issue in the U.S. See for examples Safford, 1977.

[4] As an aside, a few attorneys and judges have been known to count every word in the Cree translation and if it doesn't tally with the English they will raise objections. The Cree word 'namoya' has caused many problems this way.

For example:

> "On other occasions I enlarged the rules of the territorial court to encompass the Eskimo custom of seeking corroboration from the crowd while giving evidence. There was a trial at Igloolik in which two brothers were charged with murder in the death of their father, in which the witnesses made frequent appeals to the spectators, and a spectator once got up and corrected a witness. Counsel were quite upset by this unorthodoxy and even my court staff were a little disturbed by the amount of coaching. But I did not interfere with the coaching, or with the discussion among the spectators. This was the normal Eskimo way of getting at the truth. They were trying to get at the truth of the matter, just as the court was, and since our aims were identical it was proper for the court to enlarge its rules to encompass their methods." (1968: 125-26)

Judge Morrow (1974) also incorporated some traditional aspects by insisting on having Inuit members on his juries:

> "The jury, particularily with some natives on it, provides an opportunity for local custom and behavioral patterns to influence decisions." (p 241)

Whether or not the actions of these men will have much of an influence on legal precedent is debatable. Courtrooms seem to tend more and more towards the formalized and bureaucratic. On the other hand, family and juvenile courts have become less formal and more sympathetic to its "clients" in recent years. Some judges, a courtworker informed me, will now be more lenient on Status Indians who claim that they have not had the Indian Act explained to them, if they have committed an offence under the Indian Act. This is certainly a step in the right direction.

Conclusion:

The problems Native people face in court or anywhere in the criminal justice process may be most obvious in the conflict between legal terminology/procedure and Cree culture and language, but this is only the tip of the iceberg. The situation is getting somewhat better, probably due to a combination of the factors we have discussed. The Native incarceration rate has been dropping steadily since 1968-69 (see table 2). But Native people still commit crimes, still get caught, and still go to jail more often than the rest of the Canadian population.

This situation must be attacked at two levels:

1) increasing Native understanding of the law, increasing the criminal justice system's understanding of Natives.

2) bettering the socio-economic circumstances of all Native people.

Action is slowly beginning on the first level, mainly through the works of private agencies, many of which are Native-run. The second level can only effectively be handled by the Canadian government which so far has proved incredibly reluctant to do so.

Table 2: NATIVE ADMISSION RATES TO ALL ALBERTA CORRECTIONAL INSTITUTIONS BY FISCAL YEAR

ADMISSIONS	FISCAL YEAR										
	65-66	66-67	67-68	68-69	69-70	70-71	71-72	72-73	73-74	74-75	75-76
Total Admissions (Sentenced and Committed/Remanded)	16,012	17,006	16,414	17,132	14,565	12,734	12,195	10,979	10,733	10,740	13,273
Native Admissions	4,964	6,134	6,213	6,325	4,568	4,020	3,660	3,072	2,888	2,775	3,002
Percent Native Admissions	31.0	36.1	37.9	36.9	31.2	31.6	30.0	27.9	26.9	25.8	22.6

Source: Annual Reports of the Alberta Corrections Service, 1965-66 to 1975-76, compiled by NCSA.

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